

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MUDDY WATERS CAPITAL LLC,

Plaintiff,

v.

JOHN DOES 1-10,

Defendants.

Case No.:

Related Action: 3:19 Civ. 1293-SK (N.D. Cal.)

**DECLARATION OF SCOTT DEVINSKY
IN SUPPORT OF MOTION TO COMPEL
THIRD PARTY DISCOVERY**

Scott Devinsky declares as follows:

1. I am the Chief Financial Officer and Chief Compliance Officer of Muddy Waters Capital LLC (“MWC”), the plaintiff in this action.

2. Attached hereto as **Exhibit A** is a true and correct copy of a prime brokerage agreement dated November 4, 2015 (“Prime Brokerage Agreement”) between MWC and its principal, MLAF LP, on the one hand, and Merrill Lynch Professional Clearing Corporation (“MLPro”), on behalf of itself and as agent for certain Bank of America Merrill Lynch entities defined in the Prime Brokerage Agreement as the “BofAMLEntities,” on the other.

3. The short sale transactions identified in MWC’s Complaint as the “December 15 Transactions” were financed, arranged, executed, and cleared pursuant to the Prime Brokerage Agreement.

4. Although MWC at times communicated with Merrill Lynch International (“MLI”) in arranging and executing the December 15 Transactions, MWC did not have a direct contract with MLI related to the December 15 Transactions. Rather, in executing the December 15

Transactions, MWC's communications and relationship with MLI occurred solely under the auspices of the Prime Brokerage Agreement.

5. Email records in MWC's possession indicate that MLPro, itself may have assisted, along with MLI, in locating some or all of the securities that MWC sold short in the December 15 Transactions.

6. MWC's account statements reflecting the December 15 Transactions and other trades executed by MLI and cleared by MLPro into the MLPro-maintained brokerage account were accessed via a Bank of America Merrill Lynch-branded "Global Prime Brokerage" client web portal.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 10, 2019
New York, New York



Scott Devinsky